



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 23, 1992

Ms. Margaret Kay McCleary
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-357

Dear Ms. McCleary:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16255.

The Legal Affairs Division of the Texas Department of Criminal Justice (the "department") has received a request for information. Specifically, the requestor seeks a full copy of the "EEOC Investigation Report" made by the Institutional Division of the department. You object to disclosing the investigation report and claim exemption from public disclosure under section 3(a)(3) of the Open Records Act.

Section 3(a)(3), the "litigation exception," excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation.

Open Records Decision Nos. 555, 551 (1990). The pendency of a complaint before the EEOC indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 3(a)(3). Open Records Decision No. 386 (1983). Section 3(a)(3) also forces parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 at 4; *see* Attorney General Opinion JM-1048 (1989) (the litigation exception was intended to prevent the use of the Open Records Act as a method of circumventing the discovery rules).

We have considered the 3(a)(3) exception that you claim and have reviewed the document (Inter-Office Communications) submitted to us. An employee of the department has filed an employment claim against the department. You state that this sexual harassment charge is the subject of the EEOC Investigation Report, as well as the subject of the pending trial of the requestor's client. Accordingly, to the extent that the submitted information (Inter-Office Communications) is the requested information (EEOC Investigation Report), we conclude that the requested information is clearly relevant to the pending litigation. Consequently, unless the requested information on the investigation report previously has been disclosed to the requestor, *e.g.*, through discovery or by court order, you may withhold such information from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation at issue and to the documents at issue here.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-357.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/HJ/lmm

Ref.: ID# 16255
ID# 16256

cc: Mr. Robert E. Hoskins
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